

**UNINSURED AND UNDERINSURED MOTORIST  
INSURANCE LAW IN LOUISIANA  
SELECTED TOPICS**

BY:

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I. **Uninsured Motorist Insurance**

Uninsured / Underinsured motorist insurance provides coverage when a tortfeasor is uninsured or does not have sufficient limits to fully compensate the insured. Louisiana law requires UM insurance to be issued at the bodily injury liability limits unless lower limits are selected or UM insurance is rejected. UM coverage is governed by the policy language but also by statute: **La.R.S. 22:1406(D)**. This statute states as follows:

D. The following provisions shall govern the issuance of uninsured motorist coverage in this state:

(1)(a)(i) No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to **any motor vehicle** designed for use on public highways and **required to be registered in this state** or as provided in this Subsection unless coverage is provided therein or supplemental thereto, **in not less than the limits of bodily injury liability provided by the policy**, under provisions filed with and approved by the commissioner of insurance, for the **protection of persons insured thereunder who are legally entitled to recover nonpunitive damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness, or disease, including death resulting therefrom**; however, the coverage required under this Subsection is not applicable when any insured named in the policy either **rejects coverage, selects lower limits, or selects economic-only coverage**, in the manner provided in Item D(1)(a)(ii) of this Subsection. In no event shall the policy limits of an uninsured motorist policy be less than the minimum liability limits required under R.S. 32:900, unless economic-only coverage is selected as authorized herein. Such coverage need not be provided in or supplemental to a renewal, reinstatement, or substitute policy when the named insured has rejected the coverage or selected lower limits in connection with a policy previously issued to him by the same insurer or any of its affiliates. The coverage provided under this Subsection may exclude coverage for punitive or exemplary damages by the terms of the policy or contract. **Insurers may also make available, at a reduced**

**premium, the coverage provided under this Subsection with an exclusion for all noneconomic loss. This coverage shall be known as "economic-only" uninsured motorist coverage.** Noneconomic loss means any loss other than economic loss and includes but is not limited to pain, suffering, inconvenience, mental anguish, and other noneconomic damages otherwise recoverable under the laws of this state.

(ii) After September 1, 1987, such rejection, selection of lower limits, or selection of economic-only coverage shall be made only on a form prescribed by the commissioner of insurance. The prescribed form shall be provided by the insurer and signed by the named insured or his legal representative. The form signed by the named insured or his legal representative which initially rejects such coverage, selects lower limits, or selects economic-only coverage shall be conclusively presumed to become a part of the policy or contract when issued and delivered, irrespective of whether physically attached thereto. A properly completed and signed form creates a rebuttable presumption that the insured knowingly rejected coverage, selected a lower limit, or selected economic-only coverage. **The form signed by the insured or his legal representative which initially rejects coverage, selects lower limits, or selects economic-only coverage shall remain valid for the life of the policy and shall not require the completion of a new selection form when a renewal, reinstatement, substitute, or amended policy is issued to the same named insured by the same insurer or any of its affiliates.** An insured may change the original uninsured motorist selection or rejection on a policy at any time during the life of the policy by submitting a new uninsured motorist selection form to the insurer on the form prescribed by the commissioner of insurance. Any changes to an existing policy, regardless of whether these changes create new coverage, except changes in the limits of liability, do not create a new policy and do not require the completion of new uninsured motorist selection forms. **For the purpose of this Subsection, a new policy shall mean an original contract of insurance which an insured enters into through the completion of an application on the form required by the insurer.** Any form executed prior to September 6, 1998 shall be valid only until the policy renewal date; thereafter, the rejection, selection of lower limits, or selection of economic-only coverage shall be on a form prescribed by the commissioner as provided in this Subsection.

(iii) This Subparagraph and its requirement for uninsured motorist coverage **shall apply to any liability insurance covering any accident which occurs in this state and involves a resident of this state.**

(iv) Notwithstanding any contrary provision of this Section, an automobile liability policy written to provide coverage for a school bus may limit the scope of uninsured motorist liability to only provide liability coverage for damages incurred by reason of an accident or incident involving the school bus, or a temporary substitute vehicle, and such limitation shall limit the uninsured motorist coverage of a named insured in the policy to only damages incurred by reason of such accident or incident.

(b) Any insurer delivering or issuing an automobile liability insurance policy referred to herein shall also permit the insured, at his written request, to increase the coverage applicable to uninsured motor vehicles provided for herein to any available limit up to the bodily injury liability coverage limits afforded under the policy.

(c)(i) If the insured has any limits of uninsured motorist coverage in a policy of automobile liability insurance, in accordance with the terms of Subsection D(1), then **such limits of liability shall not be increased because of multiple motor vehicles covered under said policy of insurance and such limits of uninsured motorist coverage shall not be increased when the insured has insurance available to him under more than one uninsured motorist coverage provision or policy;** provided, however, that with respect to other insurance available, the policy of insurance or endorsement shall provide the following:

(ii) With respect to bodily injury to an injured party while **occupying an automobile not owned by said injured party, resident spouse, or resident relative, the following priorities of recovery** under uninsured motorist coverage shall apply:

(aa) The uninsured motorist coverage on the vehicle in which the injured party was an occupant is primary;

(bb) Should that primary uninsured motorist coverage be exhausted due to the extent of damages, then the injured occupant may recover as excess from other uninsured motorist coverage available to him. In no instance shall more than one coverage from more than one uninsured motorist policy be available as excess over and above the primary coverage available to the injured occupant.

(d) Unless the named insured has rejected uninsured motorist coverage, **the insurer issuing an automobile liability policy that does not afford**

**collision coverage for a vehicle insured thereunder shall, at the written request of a named insured, provide coverage in the amount of the actual cash value of such motor vehicle** described in the policy or ten thousand dollars, whichever is less, for the protection of persons insured thereunder who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of property damage to the motor vehicle described in the policy arising out of the operation, maintenance, or use of the uninsured motor vehicle. The coverage provided under this Subsection shall be subject to a deductible in an amount of two hundred fifty dollars for any one accident. The coverage provided under this Subsection shall not provide protection for any of the following:

(i) Damage where there is no actual physical contact between the covered motor vehicle and an uninsured motor vehicle, unless the injured party can show, by an independent and disinterested witness, that the injury was the result of the actions of the driver of another vehicle whose identity is unknown or who is uninsured or underinsured.

(ii) Loss of use of a motor vehicle.

(iii) Damages which are paid or payable under any other property insurance.

(e) The uninsured motorist coverage does not apply to bodily injury, sickness, or disease, including death of an insured resulting therefrom, **while occupying a motor vehicle owned by the insured if such motor vehicle is not described in the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of the policy.** This provision shall not apply to uninsured motorist coverage provided in a policy that does not describe specific motor vehicles.

(f) Uninsured motorist coverage shall include coverage for bodily injury arising out of a motor vehicle accident caused by an automobile which has **no physical contact** with the injured party or with a vehicle which the injured party is occupying at the time of the accident, provided that the injured party bears the burden of proving, by an independent and disinterested witness, that the injury was the result of the actions of the driver of another vehicle whose identity is unknown or who is uninsured or underinsured.

(2)(a) For the purpose of this coverage, the terms "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of **insolvency**.

(b) For the purposes of this coverage the term uninsured motor vehicle shall, subject to the terms and conditions of such coverage, also be deemed to include an insured motor vehicle **when the automobile liability insurance coverage on such vehicle is less than the amount of damages suffered by an insured** and/or the passengers in the insured's vehicle at the time of an accident, as agreed to by the parties and their insurers or as determined by final adjudication.

(3) Any party possessing a **certificate of self-insurance** as provided under the Louisiana Motor Vehicle Safety Responsibility Law, shall be an "insurer" within the meaning of uninsured motorist coverage provided under the provisions of this Subsection. This provision shall not be construed to require that a party possessing a certificate of self-insurance provide uninsured motorists coverage or that such coverage is provided by any party possessing such a certificate.

(4) **In the event of payment** to any person under the coverage required by this Section and subject to the terms and conditions of such coverage, **the insurer** making such payment shall, to the extent thereof, be **entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible** for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

(5) The coverage required under this Subsection may include provisions for the submission of claims by the assured to **arbitration**; provided, however, that the submission to arbitration shall be **optional** with the assured, shall not deprive the assured of his right to bring action against the insurer to recover any sums due him under the terms of the policy, and shall not purport to deprive the courts of this state of jurisdiction of actions against the insurer.

(6) In any action to enforce a claim under the uninsured motorist provisions of an automobile liability policy **the following shall be admissible as prima facie proof** that the owner and operator of the

vehicle involved did not have automobile liability insurance in effect on the date of the accident in question:

(a) The introduction of **sworn notarized affidavits from the owner and the operator** of the alleged uninsured vehicle attesting to their current addresses and declaring that they did not have automobile liability insurance in effect covering the vehicle in question on the date of the accident in question. When the owner and the operator of the vehicle in question are the same person, this fact shall be attested to in a single affidavit.

(b) **A sworn notarized affidavit by an official of the Department of Public Safety and Corrections to the effect that inquiry has been made pursuant to R.S. 32:871** by depositing the inquiry with the United States mail, postage prepaid, to the address of the owner and operator as shown on the accident report, and that neither the owner nor the operator has responded within thirty days of the inquiry, or that the owner or operator, or both, have responded negatively as to the required security, or a sworn notarized affidavit by an official of the Department of Public Safety and Corrections that said department has not or cannot make an inquiry regarding insurance. **This affidavit shall be served by certified mail upon all parties fifteen days prior to introduction into evidence.**

(c) Any admissible evidence showing that the owner and operator of the alleged uninsured vehicle was a nonresident or not a citizen of Louisiana on the date of the accident in question, or that the residency and citizenship of the owner or operator of the alleged uninsured vehicle is unknown, together with a sworn notarized affidavit by an official of the Department of Public Safety and Corrections to the effect that on the date of the accident in question, neither the owner nor the operator had in effect a policy of automobile liability insurance.

(d) The effect of the prima facie evidence referred to in (a), (b) and (c) above is to **shift the burden of proof from the party or parties alleging the uninsured status of the vehicle in question to their uninsured motorist insurer.**

(7) Each nonadmitted company (surplus line underwriter) shall file with the Casualty and Surety Division in accordance with the regulations of the casualty and surety division a copy of each automobile liability policy written by said company.

**A. Insurance Company Obligations**

Insurance companies are obligated to honor the terms of their policies as well as the Louisiana statutes regulating UM insurance and payment of claims. As stated above, 22:1406 requires certain coverages. Additionally, the policy provides other coverages and terms. Finally, 22:658 requires insurers to pay claims within 30 days of satisfactory proof of loss and 22:1220 requires payment within 60 days of satisfactory proof of loss. Both 22:658 and 22:1220 have penalty provisions enforcing these obligations of the insurers.

The insuring clause of the Insurance Services Personal Auto Policy sets forth the general coverage provided by UM policies. This policy states as follows:

*INSURING AGREEMENT*

*A. We will pay compensatory damages which an Ainsured@ is legally entitled to recover from the owner or operator of an Auninsured motor vehicle@ because of Abodily injury@:*

- 1. Sustained by an Ainsured@; and*
- 2. Caused by an accident.*

*The owner=s or operator=s liability for these damages must arise out of the ownership, maintenance or use of the Auninsured motor vehicle@.*

*Any judgment for damages arising out of a suit brought without our written consent is not binding on us.*

*We will pay under this coverage only after the limits of liability under any applicable bodily injury liability bonds or policies have been exhausted by payment of judgments or settlements.*

B. *AInsured@ as used in this Endorsement means:*

1. *You or any Afamily member.@*
2. *Any other person Aoccupying@ Ayour covered auto@.*
3. *Any person for damages that person is entitled to recover because of Abodily injury@ to which this coverage applies sustained by a person described in 1. or 2. above.*

C. *AUninsured motor vehicle@ means a land motor vehicle or trailer of any type:*

1. *To which no bodily injury liability bond or policy applies at the time of the accident.*
2. *To which a bodily injury liability bond or policy applies at the time of the accident but the amount paid for the Abodily injury@ under that bond or policy to an Ainsured@ is not enough to pay the full amount the Ainsured@ is legally entitled to recover as damages.*
3. *Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in Abodily injury@ without hitting:*
  - a. *You or any Afamily member@;*
  - b. *A vehicle which you or any Afamily member@ are Aoccupying@; or*
  - c. *AYour covered auto@.*

*If there is no physical contact with the hit-and-run vehicle the Ainsured@ must show, by an independent and disinterested witness, that the Abodily injury@ was the result of the actions of an unidentified motorist.*

4. *To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:*
  - a. *Denies coverage; or*
  - b. *Is or becomes insolvent.*

*However, Aninsured motor vehicle@ does not include any vehicle or equipment:*

1. *Owned by or furnished or available for the regular use of you or any Afamily member@.*
2. *Owned by any governmental unit or agency.*
3. *Operated on rails or crawler treads.*
4. *Designed mainly for use off public roads while not on public roads.*
5. *While located for use as a residence or premises.*

#### *SUPPLEMENTARY PAYMENTS*

*In addition to our limit of liability we will pay to an Ainsured@ prejudgment interest awarded by a court to the Ainsured@ on that part of a judgment we pay.*

The two main statutes regulating insurers claims practice are La.R.S. 22:658 and La.R.S. 22:1220. La.R.S. 22:658 states in pertinent part as follows:

**A. (1) All insurers** issuing any type of contract, other than those specified in [R.S. 22:656](#), [R.S. 22:657](#), and Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950, **shall pay the amount of any claim due any insured within thirty days after receipt of satisfactory proofs of loss from the insured or any party in interest.**

\* \* \*

**B. (1) Failure to make such payment** within thirty days after receipt of such satisfactory written proofs and demand therefor, as provided in [R.S. 22:658\(A\)\(1\)](#), or within thirty days after written agreement or settlement as provided in [R.S. 22:658\(A\)\(2\)](#) **when such failure is found to be arbitrary, capricious, or without probable cause, shall subject the insurer to a penalty, in addition to the amount of the loss, of ten percent damages on the amount found to be due from the insurer to the insured, or one thousand dollars, whichever is greater, payable to the insured, or to any of said employees, together with all reasonable attorney fees for the prosecution and collection of such loss, or in the event a partial payment or tender has been made, ten percent of the difference between the amount paid or tendered and the amount found to be due and all reasonable attorney fees for the prosecution and collection of such amount.**

This statute requires payment within thirty days from satisfactory proof of loss failure of which the court can impose penalties of ten percent damages on the amount found to be due or one thousand dollars, whichever is greater and reasonable attorney fees. The thirty day period does not start to run until the claimant has made Asatisfactory proof of loss. The failure to pay within thirty days must be found to be arbitrary, capricious and without probable cause for penalties to apply.

This statute applies to underinsured motorist=s claims. Hart v. Allstate Insurance Company, 437 So.2d 823 (La. 1983). There are no guidelines set forth in the statute for determining what constitutes arbitrary and capricious behavior. This is left up to the courts and juries to decide.

Additionally, the payment of UM claims is enforced by LA.R.S. 22:1220, which states in pertinent part as follows:

A. An insurer, including but not limited to a foreign line and surplus line insurer, owes to his insured a duty of good faith and fair dealing. **The insurer has an affirmative duty to adjust claims fairly and promptly and to make a reasonable effort to settle claims with the insured or the claimant, or both. Any insurer who breaches these duties shall be liable for any damages sustained as a result of the breach.**

B. Any one of the following acts, if knowingly committed or performed by an insurer, constitutes a breach of the insurer's duties imposed in Subsection A:

(1) Misrepresenting pertinent facts or insurance policy provisions relating to any coverages at issue.

(2) Failing to pay a settlement within thirty days after an agreement is reduced to writing.

(3) Denying coverage or attempting to settle a claim on the basis of an application which the insurer knows was altered without notice to, or knowledge or consent of, the insured.

(4) Misleading a claimant as to the applicable prescriptive period.

**(5) Failing to pay the amount of any claim due any person insured by the contract within sixty days after receipt of satisfactory proof of loss from the claimant when such failure is arbitrary, capricious, or without probable cause.**

**C. In addition to any general or special damages to which a claimant is entitled for breach of the imposed duty, the claimant may be awarded penalties assessed against the insurer in an amount not to exceed two times the damages sustained or five thousand dollars, whichever is greater.** Such penalties, if awarded, shall not be used by the insurer in computing either past or prospective loss experience for the purpose of setting rates or making rate filings.

D. The provisions of this Section shall not be applicable to claims made under health and accident insurance policies.

This statute requires payment within sixty days of satisfactory proof of loss. It allows for the recovery of damages incurred as a result of the breach and penalties of up to two times the damages sustained or five thousand dollars whichever is greater.

One issue is whether you can recover under both 22:658 and 1220 at the same time.

In Calogero vs.Safeway, 753 So. 2d 170 (La. 2000), the court held as follows:

In this case, there is no question that Safeway failed to pay the claim within 30 days after receiving satisfactory proof of loss. Further, the trial judge made a factual finding that Safeway's failure to pay was arbitrary and capricious. Because he made this factual finding, the court of appeal was correct in awarding attorney fees under [La. R.S. 22:658](#) because, unlike penalties under [La. R.S. 22:1220](#), subd. C, penalties and attorney fees under [La. R.S. 22:658](#), subd. B(1) are mandatory, rather than discretionary, where a breach of [La. R.S. 22:658](#), subd. B(1) has occurred. McDill v. Utica Mut. Ins. Co., 475 So.2d 1085, 1092, n. 6 (La.1985) (citing Hart v. Allstate Ins. Co., 437 So.2d 823 (La.1983)); Stedman v. Pearl Assurance Co., 242 La. 84, 134

[So.2d 884, 888 \(La.1961\)](#). This holding is not in conflict with the court of appeal's correct legal finding that where [La. R.S. 22:1220](#) provides the greater penalty, [La. R.S. 22:1220](#) supersedes [La. R.S. 22:658](#) such that Calogero cannot recover penalties under both statutes. [735 So.2d at 820](#). However, because [La. R.S. 22:1220](#) does not provide for attorney fees, Calogero is entitled to recover attorney fees under [La. R.S. 22:658](#) for Safeway's arbitrary and capricious failure to pay his claim within 30 days of receiving satisfactory proof of loss.

If the court finds a violation of 22:658 , the penalties under 22:658 are mandatory, however, penalties under 22:1220 are discretionary. The court can award the greater penalties provided by 22:1220 ( two times the damages sustained or \$5,000.00) and it can award the attorney fees provided by 22:658. A court can not impose both penalties under 22:658 and 22:1220, but it can impose the higher of the two penalties and attorney fees.

The requirement placed on the insurer is to investigate and pay the uninsured motorist claim within 30 days of satisfactory proof of loss. In **McDill v. Utica**, 475 So.2d 1085 (La. 1985) the Louisiana Supreme Court set forth the basic evidence necessary for the claimant to establish **satisfactory proof of loss**. In McDill the court held as follows:

A claimant for penalties and attorneys fees under the statute has the burden of proving that the insurer failed to pay the claim within 60 days after receiving "satisfactory proof of loss" of the claim, and that the insurer was arbitrary or capricious in failing to pay. A "satisfactory proof of loss" within the meaning of [La.R.S. 22:658](#) is that which is sufficient to *fully apprise* the insurer of the insured's claim. *Hart v. Allstate Ins. Co., supra*. To establish a "satisfactory proof of loss" of an uninsured/underinsured motorist's claim, the insured must establish that the insurer received sufficient facts which fully apprise the insurer that (1) the owner or operator of the other vehicle involved in the accident was uninsured or underinsured; (2) that he was at fault; (3) that such fault gave rise to damages; and (4) establish the extent of those damages. *Hart v. Allstate Ins. Co., supra*.

Accordingly, under McDill, the insured must prove sufficient facts that would establish:

- (1) The owner or operator of the vehicle involved in the accident was uninsured or underinsured;
- (2) That he was at fault;
- (3) That such fault gave rise to damages; and
- (4) Establishing the extent of those damages.

**B. Coverage of Persons, Vehicles and Injuries**

1. Coverage of Persons

In most private passenger auto policies, the named insured and his spouse, if a resident of the same household, and any family member, who is also a resident of the household, will be insured under the policy regardless of whether they were occupying the vehicle at the time of the accident. Additionally, any person who was occupying the vehicle is also covered. Under the Insurance Services Office, Personal Auto Policy - Louisiana Endorsement, the insured is defined as follows:

*B. Insured as used in this Endorsement means:*

1. *You or any family member.*
2. *Any other person occupying your covered auto.*
3. *Any person for damages that person is entitled to recover because of bodily injury to which this coverage applies sustained by a person described in 1. or 2. above.*

**a) You or any family member**

You and family member are defined terms by the policy. The standard personal auto policy defines them as follows:

- A. *Throughout this policy, you and your refer to:*
  1. *The named insured shown in the Declarations; and*
  2. *The spouse if a resident of the same household.*
- F. *Family member means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.*

ISSUES:

1. What is residency
2. What is the degree of relationship
3. What if these persons are not occupying your covered auto
4. What if occupying an owned - non-covered auto - 22:1406D1e
5. Named person exclusion

HOWELL v. BALBOA INSURANCE COMPANY, 564 So.2d 298 (La. 1990)

The court of appeal found that plaintiff was a "family member" within the scope of the policy. An affidavit submitted in response to the motion for summary judgment recites that plaintiff "lived and resided with his mother, Shirley C. Howell, at the family residence," and that although he was attending Nicholls State College at the time of the accident, he returned to the family residence on a regular basis, on holidays and at the conclusion of school sessions. These facts have not been controverted by Balboa. We find no manifest error in the court of appeal's finding that plaintiff was a "family member" pursuant to the policy language. See [Earl v. Commercial Union Ins. Co.](#), 391 So.2d 934 (La.App. 2d Cir.1980); [Clark v. Harris](#), 522 So.2d 673 (La.App. 5th Cir.1988).

**b. Others occupying your covered auto**

The policy further provides coverage for those persons occupying your covered auto.

Occupying is defined by the Insurance Services Personal Auto Policy as

G. **Occupying** means in, upon, getting in, on, out or off.

A person does not have to actually be inside the vehicle at the time of an accident but there has to be some connection to the vehicle. The proximity or connection to the vehicle is often litigated. See Westerfield v. LaFleur, 493 So. 600 (La. 1988), Day v. Coca-Cola Bottling Company, Inc., 427 So.2d 518 (La. App. 2nd Cir.1992), Smith v. Girley, 255 So.2d 748 (La. 1971), Valentine v. Bonneville Insurance Company, 96-1382 (La. 3/17/97); 691 So.2d 665, and Howell v. Balboa Insurance Co., 564 So.2d 298 (La. 1990).

## 2. Coverage of Vehicles

The definition of *Your covered auto* typically includes any vehicle shown on the declaration page, newly acquired automobiles or a temporary substitute vehicle. It also covers any trailer you own. The definition of temporary substitute automobiles is also defined by the policy and it usually requires that the vehicles described in the declaration is at a normal use and the temporary substitute vehicle is one that you do not own and is used as a temporary substitute while the listed vehicle is out of service.

The standard policy language is as follows:

- J. *Your covered auto* means:
1. Any **vehicle shown in the Declarations**.
  2. Any of the following types of vehicles on the date you become the owner:
    - a. A private passenger auto; or

- b. *A pickup or van that:*
  - (1) *Has a Gross Vehicle Weight of less than 10,000 lbs; and*
  - (2) *Is not used for the delivery or transportation of goods and materials unless such use is:*
    - (a) *Incidental to your Abusiness@ of installing, maintaining or repairing furnishings or equipment; or*
    - (b) *For farming or ranching.*

*This provision (J.2.) applies only if:*

- a. ***You acquire the vehicle during the policy period;***
- b. ***You ask us to insure it within 30 days after you become the owner; and***
- c. ***With respect to a pickup or van, no other insurance policy provides coverage for that vehicle.***

*If the vehicle you acquire replaces one shown in the Declarations, it will have the same coverage as the vehicle it replaced. You must ask us to insure a replacement vehicle within 30 days only if you wish to add or continue Coverage for Damage to Your Auto.*

*If the vehicle you acquire is in addition to any shown in the Declarations, it will have the broadest coverage we now provide for any vehicle shown in the Declarations.*

- 3. *Any Atrailer@ you own.*
- 4. ***Any auto or Atrailer@ you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:***
  - a. *Breakdown;*
  - b. *Repair;*
  - c. *Servicing;*
  - d. *Loss; or*
  - e. *Destruction.*

*This provision (J.4.) does not apply to Coverage for Damage to Your Auto.*

### **3. Coverage of Injuries**

UM policies typically insure for compensatory damages which an insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of Bodily injury sustained by an insured; and caused by an accident.

*INSURING AGREEMENT*

A. *We will pay **compensatory damages** which an Ainsured is legally entitled to recover from the owner or operator of an Auninsured motor vehicle because of Bodily injury:*

1. *Sustained by an Ainsured; and*
2. *Caused by an accident.*

*The owner=s or operator=s liability for these damages **must arise out of the ownership, maintenance or use of the Auninsured motor vehicle.***

The owners or operators liability for these damages must arise out of ownership maintenance or use of the uninsured motor vehicle.

The term Bodily injury is a term typically defined by the policy to include bodily harm, sickness or disease, including death. The Personal Auto Policy defines it as:

D. *Bodily injury means bodily harm, sickness or disease, including death that results.*

The damages can be general damages and/or special damages.

The damages can also be caused by a Phantom vehicle. La. R.S. 22:1406(D)(1)(f)

provides as follows:

(f) Uninsured motorist coverage shall include coverage for bodily injury arising out of a motor vehicle accident caused by an automobile which has **no physical contact** with the injured party or with a vehicle which the injured party is occupying at the time of the accident, provided that the injured party bears the burden of proving, by an independent and disinterested witness, that the injury was the result of the actions of the driver of another vehicle whose identity is unknown or who is uninsured or underinsured.

In wrongful death claims, the claimant=s status is unimportant. The claim must arise from the death of an insured person. Therefore the persons entitled to sue for wrongful death under 2315.2 do not have to be insured, just the decedent. See Seaton v. Kelly 339 So.2d 731 (La. 1976).

The insured can select economic only coverage which does not include general damages. This is provided in section 22:1406(D)(1)(e) as follows:

Insurers may also make available, at a reduced premium, the coverage provided under this Subsection with an exclusion for all noneconomic loss. This coverage shall be known as "economic-only" uninsured motorist coverage.

This selection is available on the standard selection/rejection of uninsured motorist coverage form.

Uninsured Motorist Property Damage Coverage - UMPD

UM coverage does not necessarily include property damage but property damage UM coverage can be purchased. 22:1406 (D)(1)(d) allows for uninsured motorist property

damage coverage. This statute states as follows:

(d) Unless the named insured has rejected uninsured motorist coverage, **the insurer issuing an automobile liability policy that does not afford collision coverage for a vehicle insured thereunder shall, at the written request of a named insured, provide coverage in the amount of the actual cash value of such motor vehicle** described in the policy or ten thousand dollars, whichever is less, for the protection of persons insured thereunder who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of property damage to the motor vehicle described in the policy arising out of the operation, maintenance, or use of the uninsured motor vehicle. The coverage provided under this Subsection shall be subject to a deductible in an amount of two hundred fifty dollars for any one accident. The coverage provided under this Subsection shall not provide protection for any of the following:

- (i) Damage where there is no actual physical contact between the covered motor vehicle and an uninsured motor vehicle, unless the injured party can show, by an independent and disinterested witness, that the injury was the result of the actions of the driver of another vehicle whose identity is unknown or who is uninsured or underinsured.
- (ii) Loss of use of a motor vehicle.
- (iii) Damages which are paid or payable under any other property insurance.

This coverage typically requires actual contact with the uninsured motor vehicle. It usually does not allow for recovery when there is any other insurance available such as collision coverage.

### C. Exclusions

The exclusions in the Insurance Services, Personal Auto Policy - Louisiana

Endorsement state as follows:

A. *We do not provide Uninsured Motorists Coverage for Bodily injury@ sustained by:*

1. *An Ainsured@ while Aoccupying@, or when struck by, any vehicle owned by that Ainsured@ which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.*
2. *Any Ainsured@, if that Ainsured@ or the legal representative settles the Bodily injury@ claim without our consent.*

*However, this exclusion (A.2.) does not apply to damages an Ainsured@ is legally entitled to recover from the owner or operator of an Auninsured motor vehicle@ as defined in Section 2. of the definitions of Auninsured motor vehicle@.*

3. Any Ainsured@ while Aoccupying@ Ayour covered auto@ when it is being used as a public or livery conveyance. This exclusion (A.3.) does not apply to a share-the-expense car pool.
4. Any Ainsured@ using a vehicle without a reasonable belief that that Ainsured@ is entitled to do so.

B. This coverage shall not apply directly or indirectly to benefit any insurer or self- insurer under any of the following or similar law:

1. Workers= compensation law; or
2. Disability benefits law.

C. We do not provide Uninsured Motorists Coverage for punitive or exemplary damages.

1. Owned but not insured autos

Policies generally provide an exclusion for injuries incurred to an insured while occupying or struck by a vehicle owned by that insured which is not insured under the policy

Additionally 22:1406D1e states as follows:

(e) The uninsured motorist coverage does not apply to bodily injury, sickness, or disease, including death of an insured resulting therefrom, **while occupying a motor vehicle owned by the insured if such motor vehicle is not described in the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of the policy.** This provision shall not apply to uninsured motorist coverage provided in a policy that does not describe specific motor vehicles.

2. Settlement without consent

UM policies also attempt to exclude coverage for UM claims if the insured or its legal representative settles the third party claim without the insurer=s consent.

2. *Any Ainsured@, if that Ainsured@ or the legal representative settles the Abodily injury@ claim without our consent.*

*However, this exclusion (A.2.) does not apply to damages an Ainsured@ is legally entitled to recover from the owner or operator of an Auninsured motor vehicle@ as defined in Section 2. of the definitions of Auninsured motor vehicle@.*

The Louisiana endorsement allows for the insured to settle with the uninsured/underinsured tortfeasor but requires consent to settle with any other party that might be liable. This is to protect the insurer=s subrogation rights.

3. Public or livery conveyance exclusions

Policies also particularly try to exclude coverage for covered auto as being used as a

public conveyance. The exclusion often states as follows:

*Any Ainsured@ while Aoccupying@ Ayour covered auto@ when it is being used as a public or livery conveyance. This exclusion (A.3.) does not apply to a share-the-expense car pool.*

4. Using vehicle without consent.

Policies also attempt to exclude coverage when insured is using a vehicle without a reasonable belief that it is entitled to do so. This exclusion often states as follows:

*Any Ainsured@ using a vehicle without a reasonable belief that that Ainsured@ is entitled to do so.*

5. Punitive or Exemplary Damages.

The UM policies also exclude coverage for punitive or exemplary damages. This exclusion may state as follows:

*C. We do not provide Uninsured Motorists Coverage for punitive or exemplary damages.*

La. 22:1406(D)(1)(i) allows for this exclusion and states in pertinent part as follows:

The coverage provided under this Subsection may exclude coverage for punitive or exemplary damages by the terms of the policy or contract.

6. Limiting coverage to one limit when passenger in owned auto

Policies also generally seek to exclude from the definition of uninsured motor vehicle

any vehicle owned by or furnished or available to the regular use of the insured. The purpose of this exclusion is to prevent a passenger from claiming coverage on both the UM portion of the policy and the liability portion of the policy where the driver of the vehicle was the sole party at fault. Courts have found that this exclusion is valid. See Breaux v. GEICO, 369 So.2d 1335 (La. 1979). See also Casson v. Dairyland Insurance Co., 400 So.2d 718 (La. App. 3<sup>rd</sup> Cir. 1981) and Solice v. State Farm Mutual Automobile Insurance Company, 488 So.2d 1159 (La. App. 2<sup>nd</sup> Cir. 1986).

**D. Statute of Limitations.**

There is a two year statute of limitation of UM claims provided by 9:5629 which states as follows:

[9:5629. Uninsured motorist insurance claims](#)

Actions for the recovery of damages sustained in motor vehicle accidents brought pursuant to uninsured motorist provisions in motor vehicle insurance policies are prescribed by two years reckoning from the date of the accident in which the damage was sustained.

A suit filed against the tortfeasor interrupts prescription under UM. See Hoefly vs. Geico, 418 So. 2d 575 ( LA 1982 ) which held that the tortfeasor and the UM carrier are liable in solido and therefore suit against one interrupts prescription against the other.

ALEXIS, v. LUMBERMENS MUTUAL CASUALTY COMPANY., 424 So.2d 506, (La. App. 5<sup>th</sup> Cir 1982) held that where a UM claimant let the claim prescribe against the tortfeasor, the UM insurer was still entitled to the benefit of the prescribed insurance.

## II. SETTLEMENT AND MEDIATION

### C. Subrogation issues

The Personal auto policy sets forth two rights the insurance company has when it makes a UM payment to its insured:

1. Subrogation to the rights of the insured against third parties
2. Right of reimbursement from the insured should the insured recover

The policy states as follows:

#### *OUR RIGHT TO RECOVER PAYMENT*

A. *If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another we shall be subrogated to that right. That person shall do:*

1. *Whatever is necessary to enable us to exercise our rights; and*
2. *Nothing after loss to prejudice them.*

*However, our rights in this paragraph (A.) do not apply under Part D, against any person using Ayour covered auto@ with a reasonable belief that that person is entitled to do so.*

B. *If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:*

1. *Hold in trust for us the proceeds of the recovery; and*
2. *Reimburse us to the extent of our payment.*

The Louisiana Endorsement states as follows:

*B. PART F - GENERAL PROVISIONS*

*The Our Right To Recover Payment provision of Part F is amended as follows:*

*OUR RIGHT TO RECOVER PAYMENT*

1. Paragraph A. of this provision does not apply to damages an Ainsured@ is legally entitled to recover from the owner or operator of an Auninsured motor vehicle@ as defined in Section 2. of the definitions of Auninsured motor vehicle@ under Uninsured Motorists Coverage.
2. Except with respect to coverage under Section 2. Of the definition of Auninsured motor vehicle@ under Uninsured Motorists Coverage, we shall be entitled to a recovery under Paragraph A. only after the person has been fully compensated for damages.

Accordingly, the standard form states that the insurer has a right of subrogation and a right of reimbursement. The Louisiana Endorsement states that the insurer is not subrogated to the rights of the plaintiff against the uninsured motorist. Additionally, it states that the right of recovery only applies after the insured has been fully compensated.

Louisiana law also controls this area. L.A.R.S. 22:1406(D)(4) states in pertinent part as follows:

**(4) In the event of payment to any person under the coverage required by this Section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or**

**organization legally responsible** for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

Accordingly the Louisiana UM statute allows for subrogation.

### **CASES ON SUBROGATION:**

SHARP, Jr. v. DAIGRE, Jr., et al. 555 So.2d 1361 (La. 1990)

A UM carrier has no independent right to recover from a tortfeasor. After paying a UM claim, a carrier may be conventionally subrogated to the rights of its insured against the tortfeasor. However, the law favors compromise. Niemann v. Travelers Insurance Co., 368 So.2d 1003 (La.1979). Without a full release, an underinsured motorist and his liability carrier would never agree to compromise. Thus, the UM carrier's interest in subrogation must be subordinated to the recovery of damages by the injured person. Niemann; McKenzie, Louisiana Uninsured Motorist Coverage--After Twenty Years, 43 La.L.Rev. 691 (1983). If the insured releases the tortfeasor in the course of good faith compromise and settlement, the UM carrier has no recourse. Niemann; Bond v. Commercial Union Assurance Co., 407 So.2d 401 (La.1981); \*1364 Pace v. Cage, 419 So.2d 443 (La.1982); Bosch v. Cummings, 520 So.2d 721 (La.1988).

SERPAS v. RIDLEY, 556 So.2d 134 (La. App.5<sup>th</sup> Cir. 1990).

The appellant contests the granting of Ridley and Champion's exception and dismissal of the third party claim on the basis of having established its subrogation rights by payment. It argues that under Bosch v. Cummings, 520 So.2d 721 (La.1988), an uninsured motorist carrier acquires subrogation rights against the tortfeasor if the insurer pays any part of its obligation to the victim *before* the victim releases the tortfeasor. Bituminous paid the victims \$11,400 in UM coverage on November 25, 1986. The release of Ridley and Champion took place considerably later, on May 15, 1988. Bituminous points out that Bosch approved the reasoning of Bond v. Commercial Union Assur. Co., 407 So.2d 401 (La.1981), which held that payment under a subrogation agreement in its policy allows an insurer to become subrogated to the insured's right against the uninsured tortfeasor. The Bituminous policy contains a subrogation agreement. Our reading of the Bosch and Bond cases indicates that under the facts of this case Bituminous is entitled to subrogation to the

plaintiff's right against Ridley and Champion. Under the general Civil Code articles on subrogation, the UM insurer who pays under the policy may become subrogated to the extent he has paid. Unlike Bituminous, the UM carrier in *Bosch* paid *after* the tortfeasor had been released, so that the plaintiff had no rights to transmit to the UM carrier. **By paying prior to the settlement with Ridley and Champion, Bituminous established its claim against them to the extent of the amount it had paid.** The third party claim should not have been dismissed on defendants' exception of no right or cause of action and we reverse.

EGROS v. PEMPTON, et al.606 So.2d 780 (La. 1992).

The objective of Louisiana's uninsured/underinsured motorist law, [LSA-R.S. 22:1406\(D\)](#), is to promote full recovery for damages sustained by automobile accident victims by making UM insurance available to the insured whenever a tortfeasor has no insurance or has insufficient insurance to adequately compensate for damages. [Bosch v. Cummings](#), 520 So.2d 721, 723 (La.1988); [Hoefly v. Government Employees Ins. Co.](#), 418 So.2d 575, 578 (La.1982); [Bond v. Commercial Union Assur. Co.](#), 407 So.2d 401, 409-10 (La.1981). This statutory scheme ensures that tortfeasors are ultimately held responsible for their delicts and encourages motorists to maintain adequate liability coverage. [Bond](#), 407 So.2d at 411. To effectuate this goal, the legislature granted UM insurers the right to receive ("be entitled to") the proceeds of any settlement or judgment which has resulted or might result ("resulting") from the exercise of the insured's rights against the uninsured tortfeasor (and by implication the underinsured tortfeasor).

[Niemann v. Travelers Ins. Co.](#), 368 So.2d 1003, 1007 (La.1979).

[LSA-R.S. 22:1406\(D\)\(4\)](#) provides:

In the event of payment to any person under the coverage required by this Section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting \*784 from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

Although originally interpreted by this court as a right only of reimbursement, *see Niemann*, 368 So.2d at 1006, the court later reasoned that a UM insurer, upon

payment to its insured, becomes conventionally subrogated to its insured's right against the uninsured or underinsured tortfeasor. See [Bond, 407 So.2d at 408](#). "[T]his construction of the statute best conforms to the purpose of the law." [Bosch, 520 So.2d at 723](#).

"Subrogation is the substitution of one person to the rights of another." [LSA-C.C. art. 1825](#); see [Bond, 407 So.2d at 408](#). "Conventional subrogation occurs when the creditor, receiving his payment from a third person, subrogates him in his rights, actions, privileges, and mortgages against the debtor." [Bond, 407 So.2d at 409](#).

[\[1\]\[2\]\[3\]](#) The UM insurer has no greater rights in subrogation than those of its insured. [Bond, 407 So.2d at 410](#). If the UM insurer pays the whole obligation, it is completely subrogated to the insured's rights against the tortfeasor. If the UM insurer pays only part of the obligation, such as when it pays to its policy limits which are less than the total amount of damages, it is partially subrogated to the insured's rights. [Bosch, 520 So.2d at 723](#); [Bond, 407 So.2d at 411](#). If partial subrogation occurs, the insured is paid in preference to the UM insurer's right to reimbursement through subrogation, to ensure full recovery for the accident victim. [\[FN6\]](#) [Johnson v. Fireman's Fund Ins. Co., 425 So.2d 224, 227 \(La.1982\)](#); [Bond, 407 So.2d at 408 n. 1](#); [LSA-C.C. art. 1826](#).

[FN6](#). State Farm was partially subrogated to its insured's rights at the time State Farm made payment by depositing its policy limits into the court's registry and by the insured's withdrawal of the funds. [Bosch, 520 So.2d at 723](#). The insured's subsequent settlement of its remaining claim with Orona and Assurance does not affect the rights State Farm received at the time of its payment. This case does not present a situation where the insured settles with a tortfeasor *before* the UM insurer makes payment. There, the insured has no rights to which the UM insurer may become subrogated. See [Bosch, 520 So.2d at 724](#); [Pace v. Cage, 419 So.2d 443, 444 \(La.1982\)](#); [Serpas v. Ridley, 556 So.2d 134 \(La.App. 5th Cir.1990\)](#).

\* \* \*

The unambiguous language of the UM statute provides that whenever a UM insurer makes payment to an insured for bodily injuries, the insurer is entitled to recover against "*any person or organization legally responsible for the bodily injury for which such payment is made.*" [LSA-R.S. 22:1406\(D\)\(4\)](#). We hold this language is broad enough to encompass the subrogation right of a UM insurer against a

non-motorist joint tortfeasor. [LSA-C.C. art. 9. \[FN8\]](#) We find that the reasoning of the first and fourth circuits, which allows a UM insurer to exercise its subrogation rights against a non-motorist joint tortfeasor, is consistent with the legislative goal of the UM statute to allow automobile accident victims full recovery. The legislature could have limited the wording of the statute to make clear that recovery for UM insurers could be had only against uninsured motorists and underinsured motorists and their insurers, but did not. A UM insurer does not differentiate when making payment to its insured between bodily injuries caused by jointly liable motorist tortfeasors and non-motorist tortfeasors. Where these two types of tortfeasors are jointly liable for bodily injuries of a person covered by a UM policy, there is no need to distinguish between the two in granting the UM insurer its subrogation rights.

B. Avoiding Bad Faith

SEE: 22:658 and 22:1220 above

Tender undisputed amount within 30 days of satisfactory proof of loss

C. Settling the Claim

Tenders vs. releases

D. Arbitration/Mediation of Coverage Disputes

In general, UM policies contain optional arbitration clauses. Louisiana law allows for optional arbitration in 22:1406(D)(5) as follows:

(5) The coverage required under this Subsection may include provisions for the submission of claims by the assured to **arbitration**; provided, however, that the submission to arbitration shall be **optional** with the assured, **shall not deprive the assured of his right to bring action against the insurer to recover any sums due him under the terms of the policy, and shall not purport to deprive the courts of this state of jurisdiction of actions**

**against the insurer.**

Accordingly, the arbitration clause can not deprive the insured of his right to bring suit or affect jurisdiction.

The Personal Auto Policy states as follows:

*ARBITRATION*

A. *If we and an Ainsured@ do not agree:*

1. *Whether that Ainsured@ is legally entitled to recover damages; or*
2. *As to the amount of damages which are recoverable by that Ainsured@; from the owner or operator of an Auninsured motor vehicle@, then the matter may be arbitrated. However, disputes concerning coverage under this Part may not be arbitrated.*

*Both parties must agree to arbitration. If so agreed, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.*

B. *Each party will:*

1. *Pay the expenses it incurs; and*
2. *Bear the expenses of the third arbitrator equally.*

C. *Unless both parties agree otherwise, arbitration will take place in the county in which the Ainsured@ lives. Local rules of law as to procedure and evidence will*

*apply. A decision agreed to by two of the arbitrators will be binding as to:*

1. *Whether the Ainsured@ is legally entitled to recover damages; and*
2. *The amount of damages. This applies only if the amount does not exceed the minimum limit for bodily injury liability specified by the financial responsibility law of Louisiana. If the amount exceeds that limit, either party may demand the right to a trial. This demand must be made within 60 days of the arbitrators' decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.*

### III. TRYING THE UNINSURED/UNDERINSURED MOTORIST CLAIM

#### A. Defending the UM/UIM Claim

##### 1. Discovery

- a. Any other available insurance
- b. liability issues
- c. Cause, nature and extent of injuries
- d.** Any other potentially liable parties
- e. Resist discovery of Claim file

##### a. Experts

###### a. Liability

- a. Liability expert - Accident reconstructionist - The UM plaintiff must prove the UM driver was at fault. Defendants will try to show the UM claimant or other insured party was at fault

###### b. Damages

- a. IME Physician - the UM plaintiff must prove the

extent of damages exceeds underlying coverages.

Usual medical defenses apply

- b. Trial defenses and strategies
  1. Make the UM plaintiff establish all elements of case as set out by McDill.
  2. Look for other uninsured parties at fault
  3. Establish fault of the UM plaintiff
  4. Apply any exclusions that may apply
  5. Introduce policies

## INSURANCE SERVICES OFFICE, INC

### PERSONAL AUTO POLICY FORM

#### RELEVANT PROVISIONS

##### DEFINITIONS:

- A. Throughout this policy, Ayou@ and Ayour@ refer to:
  - 1. The Anamed insured@ shown in the Declarations; and
  - 2. The spouse if a resident of the same household.
- B. AWe@, Aus@ and Aour@ refer to the Company providing this insurance.
- C. For purposes of this policy, a private passenger type auto shall be deemed to be owned by a person if leased:
  - 1. Under a written agreement to that person; and
  - 2. For a continuous period of at least 6 months.

Other words and phrases are defined. They are in quotation marks when used.

- D. ABodily injury@ means bodily harm, sickness or disease, including death that results.
- E. ABusiness@ includes trade, profession or occupation.
- F. AFamily member@ means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.
- G. AOccupying@ means in, upon, getting in, on, out or off.
- H. AProperty damage@ means physical injury to, destruction of or loss of use of tangible property.
- I. ATrailer@ means a vehicle designed to be pulled by a:
  - 1. Private passenger auto; or
  - 2. Pickup or van.It also means a farm wagon or farm implement while towed by a vehicle listed in 1. or 2. above.
- J. AYour covered auto@ means:

1. Any vehicle shown in the Declarations.
2. Any of the following types of vehicles on the date you become the owner:
  - a. A private passenger auto; or
  - b. A pickup or van that:
    - (1) Has a Gross Vehicle Weight of less than 10,000 lbs; and
    - (2) Is not used for the delivery or transportation of goods and materials unless such use is:
      - (a) Incidental to your Abusiness@ of installing, maintaining or repairing furnishings or equipment; or
      - (b) For farming or ranching.

This provision (J.2.) applies only if:

- a. You acquire the vehicle during the policy period;
- b. You ask us to insure it within 30 days after you become the owner; and
- c. With respect to a pickup or van, no other insurance policy provides coverage for that vehicle.

If the vehicle you acquire replaces one shown in the Declarations, it will have the same coverage as the vehicle it replaced. You must ask us to insure a replacement vehicle within 30 days only if you wish to add or continue Coverage for Damage to Your Auto.

If the vehicle you acquire is in addition to any shown in the Declarations, it will have the broadest coverage we now provide for any vehicle shown in the Declarations.

3. Any Atrailer@ you own.
4. Any auto or Atrailer@ you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. Loss; or
  - e. Destruction.

This provision (J.4.) does not apply to Coverage for Damage to Your Auto.

## **PART C - UNINSURED MOTORISTS COVERAGE**

### **INSURING AGREEMENT**

- A. We will pay compensatory damages which an Ainsured@ is legally entitled to recover from the owner or operator of an Auninsured motor vehicle@ because of Abodily injury@:
  1. Sustained by an Ainsured@; and

2. Caused by an accident.

The owner=s or operator=s liability for these damages must arise out of the ownership, maintenance or use of the Auninsured motor vehicle@.

Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

B. AInsured@ as used in this Part means:

1. You or any Afamily member.@
2. Any other person Aoccupying@ Ayour covered auto@.
3. Any person for damages that person is entitled to recover because of Abodily injury@ to which this coverage applies sustained by a person described in 1. or 2. above.

C. AUinsured motor vehicle@ means a land motor vehicle or trailer of any type:

1. To which no bodily injury liability bond or policy applies at the time of the accident.
2. To which a bodily injury liability bond or policy applies at the time of the accident. In this case its limit for bodily injury liability must be less than the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which Ayour covered auto@ is principally garaged.
3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits:
  - a. You or any Afamily member@;
  - b. A vehicle which you or any Afamily member@ are Aoccupying@; or
  - c. AYour covered auto@.
4. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:
  - a. Denies coverage; or
  - b. Is or becomes insolvent.

However, Auninsured motor vehicle@ does not include any vehicle or equipment:

1. Owned by or furnished or available for the regular use of you or any Afamily member@.

2. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
3. Owned by any governmental unit or agency.
4. Operated on rails or crawler treads.
5. Designed mainly for use off public roads while not on public roads.
6. While located for use as a residence or premises.

## EXCLUSIONS

- A. We do not provide Uninsured Motorists Coverage for Bodily injury sustained:
  1. By an insured while occupying, or when struck by, any motor vehicle owned by that insured which is not insured for this coverage under this policy, This includes a trailer of any type used with that vehicle.
  2. By any family member while occupying, or when struck by, any motor vehicle you own which is insured for this coverage on a primary basis under any other policy.
- B. We do not provide Uninsured Motorists Coverage for Bodily injury sustained by any insured:
  1. If that insured or the legal representative settles the Bodily injury claim without our consent.
  2. While occupying your covered auto when it is being used as a public or livery conveyance. This exclusion (B.2.) does not apply to a share-the-expense care pool.
  3. Using a vehicle without a reasonable belief that that insured is entitled to do so.
- C. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:
  1. Workers= compensation law; or
  2. Disability benefits law.
- D. We do not provide Uninsured Motorists Coverage for punitive or exemplary damages.

## LIMIT OF LIABILITY

- A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one accident. This is the most we will pay regardless of the number of:
  1. Insureds;
  2. Claims made;
  3. Vehicles or premiums shown in the Declarations; or

4. Vehicles involved in the accident.
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
  1. Part A or Part B of this policy; or
  2. Any Underinsured Motorists Coverage provided by this policy.
- C. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.
- D. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:
  1. Workers= compensation law; or
  2. Disability benefits law.

#### OTHER INSURANCE

If there is other applicable insurance available under one or more policies or provisions of coverage:

1. Any recovery for damages under all such policies or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing coverage on either a primary or excess basis.
2. Any insurance we provide with respect to a vehicle you do not own shall be excess over any collectible insurance providing coverage on a primary basis.
3. If the coverage under this policy is provided:
  - a. On a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on a primary basis.
  - b. On an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on an excess basis.

#### ARBITRATION

- A. If we and an Ainsured@ do not agree:
  1. Whether that Ainsured@ is legally entitled to recover damages; or
  2. As to the amount of damages which are recoverable by that Ainsured@;

- from the owner or operator of an Auninsured motor vehicle@, then the matter may be arbitrated. However, disputes concerning coverage under this Part may not be arbitrated.
- Both parties must agree to arbitration. If so agreed, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.
- B. Each party will:
1. Pay the expenses it incurs; and
  2. Bear the expenses of the third arbitrator equally.
- C. Unless both parties agree otherwise, arbitration will take place in the county in which the Ainsured@ lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding as to:
1. Whether the Ainsured@ is legally entitled to recover damages; and
  2. The amount of damages. This applies only if the amount does not exceed the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which Ayour covered auto@ is principally garaged. If the amount exceeds that limit, either party may demand the right to a trial. This demand must be made within 60 days of the arbitrators= decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

## FRAUD

We do not provide coverage for any Ainsured@ who has made fraudulent statements or engaged in fraudulent conduct in connection with any accident or loss for which coverage is sought under this policy.

## OUR RIGHT TO RECOVER PAYMENT

- A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another we shall be subrogated to that right. That person shall do:
1. Whatever is necessary to enable us to exercise our rights; and
  2. Nothing after loss to prejudice them.

However, our rights in this paragraph (A.) do not apply under Part D, against any person using Ayour covered auto@ with a reasonable belief that that person is entitled to do so.

- B. If we make a payment under this policy and the person to or for whom payment is

made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and
2. Reimburse us to the extent of our payment.

## UNINSURED MOTORISTS COVERAGE - LOUISIANA

### PART C - UNINSURED MOTORISTS COVERAGE

#### INSURING AGREEMENT

A. We will pay compensatory damages which an Ainsured@ is legally entitled to recover from the owner or operator of an Auninsured motor vehicle@ because of Abodily injury@:

1. Sustained by an Ainsured@; and
2. Caused by an accident.

The owner=s or operator=s liability for these damages must arise out of the ownership, maintenance or use of the Auninsured motor vehicle@.

Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

We will pay under this coverage only after the limits of liability under any applicable bodily injury liability bonds or policies have been exhausted by payment of judgments or settlements.

B. AInsured@ as used in this Endorsement means:

1. You or any Afamily member.@
2. Any other person Aoccupying@ Ayour covered auto@.
3. Any person for damages that person is entitled to recover because of Abodily injury@ to which this coverage applies sustained by a person described in 1. or 2. above.

C. AUninsured motor vehicle@ means a land motor vehicle or trailer of any type:

1. To which no bodily injury liability bond or policy applies at the time of the accident.
2. To which a bodily injury liability bond or policy applies at the time of the accident but the amount paid for the Abodily injury@ under that bond or policy to an Ainsured@ is not enough to pay the full amount the Ainsured@

is legally entitled to recover as damages.

3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in Bodily injury@ without hitting:
  - a. You or any Afamily member@;
  - b. A vehicle which you or any Afamily member@ are Aoccupying@; or
  - c. AYour covered auto@.

If there is no physical contact with the hit-and-run vehicle the Ainsured@ must show, by an independent and disinterested witness, that the Bodily injury@ was the result of the actions of an unidentified motorist.

4. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:
  - a. Denies coverage; or
  - b. Is or becomes insolvent.

However, Auninsured motor vehicle@ does not include any vehicle or equipment:

1. Owned by or furnished or available for the regular use of you or any Afamily member@.
2. Owned by any governmental unit or agency.
3. Operated on rails or crawler treads.
4. Designed mainly for use off public roads while not on public roads.
5. While located for use as a residence or premises.

#### SUPPLEMENTARY PAYMENTS

In addition to our limit of liability we will pay to an Ainsured@ prejudgment interest awarded by a court to the Ainsured@ on that part of a judgment we pay.

#### EXCLUSIONS

- A. We do not provide Uninsured Motorists Coverage for Bodily injury@ sustained by:
  1. An Ainsured@ while Aoccupying@, or when struck by, any vehicle owned by

that Ainsured@ which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.

2. Any Ainsured@, if that Ainsured@ or the legal representative settles the Abodily injury@ claim without our consent.

However, this exclusion (A.2.) does not apply to damages an Ainsured@ is legally entitled to recover from the owner or operator of an Auninsured motor vehicle@ as defined in Section 2. of the definitions of Auninsured motor vehicle@.

3. Any Ainsured@ while Aoccupying@ Ayour covered auto@ when it is being used as a public or livery conveyance. This exclusion (A.3.) does not apply to a share-the-expense car pool.
4. Any Ainsured@ using a vehicle without a reasonable belief that that Ainsured@ is entitled to do so.

- B. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:

1. Workers= compensation law; or
2. Disability benefits law.

- C. We do not provide Uninsured Motorists Coverage for punitive or exemplary damages.

#### LIMIT OF LIABILITY

- A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one accident. This is the most we will pay regardless of the number of:

1. AInsureds@;
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A or Part B of this policy.

- C. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.
- D. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:
  - 1. Workers= compensation law; or
  - 2. Disability benefits law.

#### OTHER INSURANCE

If there is other applicable similar insurance available under one or more policies or provisions of coverage:

- A. With respect to Bodily injury@ sustained by an Ainsured@:
  - 1. While Aoccupying A a vehicle owned by that person or while not Aoccupying@ any vehicle, any recovery for damages sustained by an A insured@ as a named insured or family member may equal but not exceed the highest applicable limit for any one vehicle under this insurance or any other insurance.
  - X While Aoccupying@ a vehicle not owned by that person, the following priorities of recovery will apply:
    - I. The uninsured motorists coverage applicable to the vehicle the Ainsured@ was Aoccupying@ at the time of the accident will be primary.
    - II. If the primary insurance is exhausted, any excess recovery for damages sustained by an Ainsured@ as a named insured or family member may equal but not exceed the highest applicable limit for any one vehicle under this insurance or any other insurance. In no instance will more than one limit be available as excess insurance.
  - 2. We will pay only our share of loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits.

## ARBITRATION

- A. If we and an Ainsured@ do not agree:
1. Whether that Ainsured@ is legally entitled to recover damages; or
  2. As to the amount of damages which are recoverable by that Ainsured@; from the owner or operator of an Auninsured motor vehicle@, then the matter may be arbitrated. However, disputes concerning coverage under this Part may not be arbitrated.

Both parties must agree to arbitration. If so agreed, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

- B. Each party will:
1. Pay the expenses it incurs; and
  2. Bear the expenses of the third arbitrator equally.
- C. Unless both parties agree otherwise, arbitration will take place in the county in which the Ainsured@ lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding as to:
1. Whether the Ainsured@ is legally entitled to recover damages; and
  2. The amount of damages. This applies only if the amount does not exceed the minimum limit for bodily injury liability specified by the financial responsibility law of Louisiana. If the amount exceeds that limit, either party may demand the right to a trial. This demand must be made within 60 days of the arbitrators= decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

## B. PART F - GENERAL PROVISIONS

The Our Right To Recover Payment provision of Part F is amended as follows:

### OUR RIGHT TO RECOVER PAYMENT

1. Paragraph A. of this provision does not apply to damages an Ainsured@ is legally entitled to recover from the owner or operator of an Auninsured motor vehicle@ as defined in Section 2. of the definitions of Auninsured motor vehicle@ under Uninsured Motorists Coverage.
2. Except with respect to coverage under Section 2. Of the definition of Auninsured motor vehicle@ under Uninsured Motorists Coverage, we shall be entitled to a recovery under Paragraph A. only after the person has been fully compensated for damages.

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